IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.216 of 1998

N.Ravindran,)
of Bombay Indian Inhabitant,)
residing at Flat No.A.A.9,)
Navy Nagar, Colaba,)
Bombay-400 005.) ..PETITIONER.

Versus

1. The Chief of Naval Staff,)
having his office at Naval)
Headquarters, New Delhi.)

2. The Flag Officer Commanding-)
In-Chief, Western Naval Command,)
having his office at INS Angre,)
S.B.S. Road, Mumbai.)

3. The Commodore, Bureau of Sailors,)
having his office at Cheetah Camp,)
Mankhurd, Bombay-400 088.)

4. Commanding Officer,)
INS Ranjit, having his office)
at C/o. Fleet Mail Office,)
Mumbai.)

5. The Union of India,)
Aayakar Bhawan,)
New Marine Lines,)
Mumbai.) ..RESPONDENTS.

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Mr.Shyam Mehta i/b. Satendra Kumar, Advocate for the Petitioner.
Mr.Y.R.Mishra with D.A. Dube, Advocates for Respondent-Union of India.

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CORAM : **DR.S.RADHAKRISHNAN AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **DECEMBER 01, 2006.**

JUDGMENT: (PER SMT.V.K.TAHILRAMANI,J.)

1. In this Petition filed under Article 226 of the Constitution of India, the petitioner is seeking a writ of *mandamus* or an order in the like

nature to promote him to the rank of Master Chief Petty Officer-II (hereinafter referred to as "MCPO-II" for brevity) and to pay the arrears of salary and the other consequential benefits.

2. The petitioner joined the Indian Navy on 16.12.1968 as a Boy and he completed his training after two years in 1970. The petitioner was promoted to the rank of Leading Seaman in the year 1976, to the rank of Petty Officer on 1.8.1982, and to the rank of Chief Petty Officer on 1.3.1989. As per the petitioner, his character has been rated as "Very Good" from the beginning, save and except in the year, 1987 when he received the rating of "Very Good*". The petitioner appeared before the Selection Board for promotion to the rank of MCPO-II for the first time in 1993, but, he was not granted the said rank though he was placed at Sr.No.37 by the Promotion Board-01/1993 and the Sailors upto Sr.No.60 were recommended for promotion. As the petitioner was denied the said promotion, obviously Sailors lower in rank than the petitioner were promoted to the

rank of MCPO-II. The petitioner subsequently learnt that the only reason for denying him the promotion was the warrant punishment received by him in the year, 1987, viz. deprivation of a Good Conduct Badge.

3. The petitioner again appeared before the Selection Board in the two subsequent years i.e. 1994 and 1995, but, was not given the rank of MCPO-II. The petitioner, therefore, approached his Command Officer to take up his case with the higher Naval Authorities. Consequently, the Commanding Officer by his letter dated 25.3.1996 strongly recommended the petitioner's case to respondent No.2 for granting the petitioner the rank of MCPO-II. However, respondent No.1 rejected the said request. The petitioner's Commanding Officer once again vide his letter dated 16.8.1996 recommended to respondent No.2 to grant the petitioner one additional opportunity for selection to the rank of MCPO-II interalia stating that the petitioner had the necessary

qualifications and requisite performance for promotion. Respondent No.2 in turn by his letter dated 22.8.1996 recommended the petitioner's case to respondent No.3 stating that the petitioner's professional record was excellent and that the warrant punishment awarded to him for a non-professional duty at an earlier stage in his career should not prevent him from being promoted. Finally the petitioner's representation dated 9.2.1997 was forwarded by respondent No.4 to respondent No.2 by his covering letter dated 21.2.1997. The said representation was rejected by respondent No.1 by letter dated 23.7.1997. Hence, this Petition.

4. Commodore Tarsem Lal Rattan, Commodore Bureau of Sailors, has filed affidavit-in-reply and opposed the Petition. It has been admitted that in the Promotion Board-01/1993 the petitioner was placed at Sr.No.37 and the Sailors upto Sr.No.60 were recommended for promotion to the rank of MCPO-II. The respondent No.3 observed that the Promotion Board had not taken cognizance

of a warrant punishment awarded to the petitioner on 27.10.1987 and consequently respondent No.1 approved the deletion of the petitioner's name from the select list vide his letter dated 8.4.1994. The Promotion Board-01/1994 again took cognizance of the warrant punishment awarded to the petitioner and, therefore, he was not recommended for promotion. The petitioner was placed at Sr.No.110 in the merit list, whereas Sailors upto Sr.No.81 were promoted. The Promotion Board-01/1995 also took cognizance of the warrant punishment awarded to the petitioner and did not recommend his case. The petitioner was placed at Sr.No.59 in the merit list, whereas Sailors upto Sr.No.40 in the merit list were promoted. In short, the respondents claimed that the petitioner was denied promotion continuously from 1993 to 1995 on account of warrant punishment awarded to him on 27.10.1987 and he was found to be lacking in the attributes required of a MCPO as laid down in Para-14 of Navy Order-40/1994(STAR).

5. We are, therefore, required to examine

whether both these grounds or any one of them could be legally accepted for denying the petitioner the promotion to the rank of MCPO-II.

6. Admittedly, the petitioner was promoted to the rank of Chief Petty Officer on 1.3.1989 i.e. after the warrant punishment awarded to him on 27.10.1987. This implies that the respondents were aware of the warrant punishment dated 27.10.1987 and despite this the petitioner was promoted to the rank of Chief Petty Officer on 1.3.1989. The only conclusion which could be implied is that the warrant punishment was for non-professional duty and it would not be a disqualification for being promoted to the next higher post. It is well recognised in Service Jurisprudence that the punishment awarded prior to the order of promotion cannot be taken into consideration for denying subsequent promotion to the next higher post. In the Promotion Board-01/1993 the petitioner was placed at Sr.No.37 and Sailors upto Sr.No.60 were recommended for promotion. The petitioner’s name

was deleted from the select list on account of warrant punishment awarded to him on 27.10.1987. This deletion was, therefore, impermissible and the respondents acted illegally and arbitrarily in deleting the petitioner's name from the select list of Promotion Board-01/1993.

7. Even otherwise the warrant punishment ceases to exist after a period of four years. Consequently, the disqualification, even if presumed to be sustained by the petitioner, ceased to exist from October,1991 onwards and, therefore, it could not have been considered against the petitioner so as to delete his name from the select list of Promotion Board-01/1993.

8. It appears that respondent No.3 has treated the warrant punishment awarded to the petitioner as a permanent disqualification incurred by the petitioner. This presumption is totally illegal as has been held by this Court in the case of **S.S.Phogat Vs. Chief of Naval Staff & Ors.** reported in **1999 I CLR 158**. We may usefully

reproduce the following observations from the said decision.:-

> . "The Service lapse on the part of the petitioner had incurred him the punishment for not being considered for promotion for a period of four years. Since the petitioner is now eligible for being considered for promotion after earning continuously 4 years' Very Good Conduct the warrant punishment incurred earlier in March 1993 cannot incur him disqualification on merits for his further promotion when he otherwise becomes eligible for promotion. If the argument which is advanced on behalf of the respondents is accepted, it would mean that although under the rules the disqualification is to be incurred by the petitioner for a period of four years only, the Promotion Board can consider the same again as disqualification on merits for recommending him for further promotion even after he earns the very good conduct continuously for four years which is required for further promotion. In other words if the contention were to be accepted it would only mean that for the said one lapse on the part of the petitioner, he incurs disqualification in perpetuity i.e., first technical ineligibility for 4 years and thereafter on merits permanently, though under the regulations he is eligible for being considered for promotion."

. The facts in the case of Phogat (supra) are almost similar to the facts in the present case.

The Petition in Phogat's case came to be allowed by this Court with directions to respondent No.3 to consider his case for promotion in the next Promotion Board.

9. In the instant case, the petitioner was in the select list of Promotion Board-01/1993 and he was at Sr.No.37. His name was deleted, while the Sailors upto Sr.No.60 came to be promoted. We have already held that this deletion of petitioner's name was illegal, arbitrary and, therefore, *void ab initio*.

10. In respect of the subsequent Promotion Boards i.e. 01/1994 and 01/1995, the respondents have contended that the petitioner was found to be lacking in the attributes required of a MCPO as laid down in Para-14 of Navy Order 40/1994. The attributes in Para-14 as are required to be examined by the Selection Board are :-

"(a) Professional knowledge and performance in courses.

(b) Qualities of leadership including performance in PO(L) and CPO(M) course.

(c) Ability to shoulder higher responsibilities.

(d) Maturity.

(e) Managerial ability.

(f) Integrity and loyalty.

(g) Personal qualities.

(h) Discipline with special emphasis on warrant punishment awarded as a Senior Sailors.

(j) Duties as an Instructor in major training establishments and CAT 'A' schools.

(k) Participation in sports and extra curricular activities like, Antarctica expedition, Oceansailing, mountaineering with special emphasis on representation at International, National and Services level.

(l) Receipt of Gallantry Awards and Commendations.

(m) Any specific achievement in technological fields."

11. The respondents have not pointed out as to which attributes the petitioner lacked; and the vague statement that the petitioner lacked the attributes required for a MCPO is by way of an

afterthought and this appears for the first time in the letter dated 23.7.1997 addressed by Commodore, Director of Personnel for Chief of the Naval Staff to the Flag Officer Commanding-in-Chief, Western Naval Command(for CAPO). We are, therefore, not impressed by this reasoning adopted by the respondents and in any case this ground is relevant only in respect of Promotion Board-01/1994 and Promotion Board-01/1995. The respondents in the affidavit-in-reply have stated as under :-

> "....Without prejudice to the erroneous date of promotion to the rank of Chief Petty Officer, the Petitioner was eligible to be considered for promotion to MCPO II in the year 1993 i.e. his first attempt. As brought out in para 2 (a) above the Petitioner was not promoted as he was found to be lacking in qualities required for higher rank as per para 14 of Navy Order (Starred) 40/94."

12. In the facts of this case, we are satisfied that the law laid down by this Court in the case of Phogat(supra) renders the deletion of petitioner’s name from the select list of

Promotion Board-01/1993 as illegal and *void ab initio* and he ought to have been promoted on the basis of the said select list to the rank of MCPO-II, moreso when the Sailors below him in the merit list upto Sr.No.60 were granted such promotions.

13. During the pendency of this Petition, the petitioner retired on attaining the age of superannuation on 30.11.2000 and, therefore, he would be entitled for the consequential benefits till that date and refixation of pensionary benefits.

14. In the premises, this Petition succeeds and the same is hereby allowed. The petitioner would be deemed to have retired as MCPO-II w.e.f. 30.11.2000. The respondents are directed to grant the rank of MCPO-II to the petitioner on the basis of his placement at Sr.No.37 in the select list of Promotion Board-01/1993 and to fix his salary in the said higher post from the date of promotion granted to all Sailors in the select list of

Promotion Board-01/1993. The respondents are further directed to pay the arrears of salary and refix the pensionary benefits of the petitioner by 31st March, 2007.

. Rule is made absolute accordingly with no order as to costs.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]